

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDING)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> ,)	
)	
Debtor.)	Hearing Date: Dec. 15, 2009 at 1:00 p.m.
_____)	Obj. Deadline: Dec. 8, 2009 at 4:00 p.m.

**MOTION OF PARKER DEVELOPMENT N.W., INC.
FOR LEAVE TO FILE A PROOF OF CLAIM AFTER THE BAR DATE**

Parker Development N.W., Inc. ("Parker Development" or the "Movant"), by and through its undersigned counsel, pursuant to 11 U.S.C. § 501 and Fed. R. Bankr. P. 3003(c)(3) and 9006(b)(1), files this motion for leave to file their proof of claim after the expiration of the Bar Date and deem such claim timely filed (the "Motion"). In support of this Motion, Parker Development respectfully represents as follows:

JURISDICTION

1. This Court has Jurisdiction pursuant to 28 U.S.C. §§ 1344 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1408.

BACKGROUND

2. On June 16, 2009 (the "Petition Date"), the above-captioned debtors, (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware.

3. On or about June 26, 2009, the Debtor filed the Motion to Establish the Claims Bar Date [D.I. No. 106]. On or about July 16, 2009, the Court entered its Order establishing August 31, 2009 as the deadline to file proofs of claim against the Debtor (the “Bar Date”) [D.I. No. 248]. On or about July 23, 2009 Debtors filed the Notice of Claims Bar Date [D.I. No. 296].

4. Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components, and provide construction services to professional buildings and contractors through a network of 31 distribution facilities, 43 manufacturing facilities and five regional construction services facilities.

5. Parker Development was a developer and general contractor for the construction of row homes located on NW Burnside Road, Gresham, Oregon and commonly known as Covington Place Row Homes (the “Project”). Parker Development has been named as a defendant in the Circuit Court of the State of Oregon, for the County of Multnomah, by Plaintiffs Covington Place Row Homes Association, Inc., and the individual Unit Owners, Carol D. Sadle and Vera Eileen Williams, Sheree L. Bogardus, Marcie M. Murray, Kira L. Updike and Thomas Anderson, Julie D. Muramatsu, Cara Lynn, Elizabeth M. Williams, Joann M. Leutwyler, Amanda and Erik Kowalker, Alicia A. Smith, Sara A. Garland, Jarom Marvin Sweazey, Lisa Severin, Mark and Sharon Ulrich, Peter M. and Lisa A. Emerson, Rodney M. Lewis and Marquitta M. Farrell-Lewis and Smith Wang (“Plaintiffs”). Plaintiffs’ claims against Parker Development are related to Parker Development’s role as developer and general contractor on the Project.

6. Parker Development filed its Third Party Complaint against Joe’s Siding

Corp., Westurn Cedar, Inc., James Robert Warner d/b/a Rocks Roll Concrete, Fadey Cherimnov d/b/a Inway Construction Company ("Inway"), Pinkerton Painting & Restoration, LLC, Jacobs Heating & Air Conditioning, Inc., Kiril Ivanov d/b/a I&E Construction (collectively as the "Third Party Defendants"). All of the Third Party Defendants entered into subcontract agreements to complete certain work on the Project.

7. Until recently, Parker Development was under the belief that Inway had performed all of the framing work on the project. Parker Development knew that the Debtors provided building materials for the Project; however, none of the claims in the Oregon state court action involved alleged defects in the material provided by the Debtors.

8. Through the discovery process, Parker Development learned that BMC West Corporation a/k/a Building Materials Holding Corporation had also entered into a subcontract to complete work on the Project, which work is also subject to the claims now pending against Parker Development. Parker Development did not receive notice of the Bar Date prior to learning of its claim.

9. Subsequent to the Bar Date, Parker Development learned of its third party claims against the Debtors, and in turn, learned that the Debtors had filed voluntary petitions for relief under the Bankruptcy Code. It was not until the summer of 2009 that Parker Development uncovered facts that indicated Debtors provided framing services in connection with the Project. In September, 2009, counsel for Parker Development in the Oregon state court action were able to confirm that Debtors were responsible for some of the framing work. Shortly thereafter, Jeffrey Parker authorized counsel to contact bankruptcy counsel in Delaware to seek appropriate relief. In October 2009, Cross &

Simon, LLC was hired as local bankruptcy counsel for Parker Development in the above-captioned case. Shortly after hiring local bankruptcy counsel, on October 30, 2009, Parker Development filed its Motion for Relief from the Automatic Stay [D.I. No. 813] seeking to join BMC West Corporation a/k/a Building Materials Holding Corporation as a third-party defendant in the Oregon state court action. Prior to filing its Motion for Relief from the Automatic Stay, local bankruptcy counsel for Parker Development contacted counsel for Debtors to determine if Debtors would be willing to stipulate to the relief sought. It was shortly after this exchange that Parker Development learned that the Bar Date had passed. In support of these facts, a copy of the Declaration of Jeffrey Parker is attached hereto as Exhibit A.

RELIEF REQUESTED

10. By this motion, Parker Development seeks leave from this Court allowing it to file a claim after the Bar Date on the basis of excusable neglect.

11. Pursuant to Bankruptcy Rules 3003(c)(2), 3003(c)(3) and 9006(b)(1), courts may extend the period for filing or amending a proof of claim where the late filing resulted from excusable neglect. *In re Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993). In *Pioneer*, the Supreme Court held that a creditor could file its proof of claim outside of the bar date where the failure to timely file was the result of excusable neglect. Relying on Rule 9006(b)(1), the Supreme Court found that excusable neglect extends even to failures that are within a party's control. *Id.* at 388.

10. In deciding whether excusable neglect exists, courts review four factors – (1) the danger of prejudice to the debtor; (2) the length of delay and its potential impact

on judicial proceedings; (3) the reason for the delay, including whether the movant had reasonable control; and (4) whether the movant acted in good faith. *Id.* at 395. The foregoing test has been adopted by the Third Circuit. *See In re O'Brien Environmental Energy, Inc.*, 188 F. 3d 116, 130 (3d Cir. 1999).

11. Here, there is no prejudice to the Debtors in allowing Parker Development to file its claims after the Bar Date. The Debtors are aware of the liabilities associated with entering into subcontract agreements and/or supplying building materials to various general contractors.

12. Allowing Parker Development to file a claim after the bar date would not have any material impact on the Debtors bankruptcy proceedings as the length of delay has not been undue. The above-captioned cases are in the “pre-confirmation” phase. Less than three months have elapsed since the Bar Date. Less than five months have elapsed since the Petition Date. Parker Development did not become aware of its claims against the Debtors until after the Bar Date had passed. Upon learning of its possible claims, Parker Development promptly retained counsel in order to preserve its rights. Courts in this Circuit have found excusable neglect in delays in the filing of claims much longer than in the present case. *See Chemetron Corp v. Jones*, 72 F.3d 341 (3d Cir. 1995) (finding excusable neglect two years after debtors’ plan was confirmed).

13. Further, the delay in the filing of Parker Development’s claim is excusable as Parker Development did not have knowledge of the potential claim until after the established Bar Date.

14. Finally, there is no indication that Parker Development has acted in any manner that would indicate anything other than good faith. Indeed, upon learning of the

possible third party claims against the Debtors, Parker Development promptly hired counsel to preserve its rights. Counsel for Parker Development timely informed Debtor's counsel that Parker Development wanted to assert its claim, and sought a stipulation.

15. For the reasons above, Parker Development should be permitted to file their proof of claim after Bar Date on the basis of excusable neglect. This Motion is being filed in addition to, and not in lieu of Parker Development's Motion for Relief from the Automatic Stay.

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WHEREFORE, Parker Development respectfully requests that the Court enter an Order allowing Parker Development to file their proof of claim after the Bar Date and deeming such claim timely filed.

Dated: November 30, 2009
Wilmington, Delaware

CROSS & SIMON, LLC

By: 

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*Counsel for Parker Development
N.W., Inc.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
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BUILDING MATERIALS HOLDING)	Case No. 09-12074 (KJC)
CORPORATION,)	
)	
Debtor.)	Hearing Date: December 15, 2009 at 1:00 p.m.
)	Obj. Deadline: December 8, 2009 at 4:00 p.m.

**NOTICE OF MOTION OF PARKER DEVELOPMENT N.W., INC.
FOR LEAVE TO FILE A PROOF OF CLAIM AFTER THE BAR DATE**

PLEASE TAKE NOTICE that on November 30, 2009, the undersigned attorneys filed on behalf of Parker Development N.W., Inc., the Motion of Parker Development N.W., Inc. for Leave to File a Proof of Claim After the Bar Date (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be made in writing, filed with the Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, DE 19801 and served upon, so as to actually be received by the undersigned counsel, on or before **December 8, 2009 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE that if an objection is properly filed in accordance with the above procedure, a hearing on the Motion will be held before the Honorable Kevin J. Carey on December 15, 2009 at 1:00 p.m. Only those objections made in response to the Motion will be heard.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT
MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER
NOTICE OR HEARING.

Dated: November 30, 2009
Wilmington, Delaware

CROSS & SIMON, LLC

By: 

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Patrick M. Brannigan (No. 4778)
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Counsel to Parker Development N.W., Inc.

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
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Debtor.)	Hearing Date:
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DECLARATION OF JEFFREY PARKER

Pursuant to 28 U.S.C. § 1746, Jeffery Parker hereby declares under penalty of perjury as follows:

1. He is the President of Parker Development N.W., Inc. ("Parker Development" or the "Movant") and is authorized to give this Declaration on the Movant's behalf. This Declaration is offered in connection with Parker Development's Motion for Leave to File a Late Proof of Claim (the "Motion").

2. Parker Development was a developer and general contractor for the construction of row homes located on NW Burnside Road, Gresham, Oregon and commonly known as Covington Place Row Homes (the "Project"). Parker Development has been named as a defendant in a case (the "Oregon Litigation") pending before the Circuit Court of the State of Oregon, for the County of Multnomah, by Plaintiffs Covington Place Row Homes Association, Inc., and the individual Unit Owners, Carol D. Sadle and Vera Eileen Williams, Sheree L. Bogardus, Marrcie M. Murray, Kira L. Updike and Thomas Anderson, Julie D. Muramatsu, Cara Lynn, Elizabeth M. Williams, Joann M. Leutwyler, Amanda and Erik Kowalker, Alicia A. Smith, Sara A. Garland, Jarom Marvin Sweazey, Lisa Severin, Mark and Sharon Ulrich, Peter M. and Lisa A.

Emerson, Rodney M. Lewis and Marquitta M. Farrell-Lewis and Smith Wang ("Plaintiffs"). Plaintiffs' claims against Parker Development are related to Parker Development's role as developer and general contractor on the Project.

3. Parker Development filed a Third Party Complaint against Joe's Siding Corp., Westurn Cedar, Inc., James Robert Warner d/b/a Rocks Roll Concrete, Fadey Cherimnov d/b/a Inway Construction Company ("Inway"), Pinkerton Painting & Restoration, LLC, Jacobs Heating & Air Conditioning, Inc., Kiril Ivanov d/b/a I&E Construction (collectively as the "Third Party Defendants"). All of the Third Party Defendants entered into subcontract agreements to complete certain work on the Project.

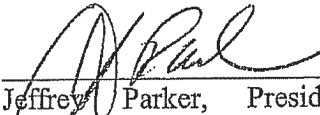
4. In particular, until recently Parker Development was under the belief that Inway had performed all the framing work on the Project. Movant knew that BMC West Corporation a/k/a Building Materials Holding Corporation ("BMC") had provided building materials for the Project, none of the claims in the Oregon Litigation involved alleged defects in the material provided by BMC.

5. In the summer of 2009, attorneys representing Parker Development in the Oregon Litigation uncovered facts in the discovery process which suggested that BMC provided framing services in connection with the Project. In September 2009, our attorneys were able to confirm that BMC was responsible for some of the framing work. After discussions with our attorneys we decided to attempt to bring BMC into the Oregon Litigation as a third party defendant. I was informed at that time that BMC was a Debtor in bankruptcy proceedings before this Court. I therefore authorized our counsel to contact bankruptcy counsel in Delaware in September 2009 to seek appropriate relief. In

October 2009, we retained the law firm of Cross & Simon LLC to represent the Movant in BMC's bankruptcy proceedings.

6. Parker Development has never received formal notice of BMC's bankruptcy proceedings or any deadline for submitting claims against BMC.

Dated: 11/23/09



Jeffrey Parker, President of Parker
Development, N.W., Inc.

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BUILDING MATERIALS HOLDING)	Case No. 09-12074 (KJC)
CORPORATION,)	
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Debtor.)	
_____)	

**ORDER GRANTING MOTION OF PARKER DEVELOPMENT N.W., INC.
FOR LEAVE TO FILE PROOF OF CLAIM AFTER THE BAR DATE**

UPON CONSIDERATION of Parker Development N.W., Inc.'s (the "Movant's") Motion for Leave to File a Proof of Claim After the Bar Date (the "Motion") and due and proper notice of the Motion having been given, and no other or further notice being necessary or required; and after due deliberation and sufficient cause appearing therefore

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED; and
2. Movant is granted leave to file a proof of claim after the bar date as Movant did not learn of its claims until after the bar date, and did not receive prior notice of the Debtor's bankruptcy.

Dated: _____, 2009

The Honorable Kevin J. Carey
United States Bankruptcy Court Judge

CERTIFICATE OF SERVICE

I, Patrick M. Brannigan, hereby certify that on this 30th day of November, 2009, I caused copies of the foregoing *Motion of Parker Development N.W., Inc. for Leave to File a Proof of Claim After the Bar Date* to be served on the parties listed below as indicated.

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